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May 8, 2019

Barbara A. Langhenry
Director of Law
City of Cleveland
601 Lakeside Ave., Room 106

Sent via Certified Mail and email to blanghenry@city.cleveland.ohio.us

Re: Taxpayer demand under R.C. 733.58, R.C. 73359, and the City of Cleveland Charter §§ 89-90 that the Clerk of Cleveland City Council accept petitions for a proposed ordinance to protect children from lead poisoning

Dear Director Langhenry:

I write on behalf of City of Cleveland taxpayers Lawrence Bresler, Rosemarie Driscoll, Jesse Faley, Yvonka Hall, Jeffrey Johnson, Diana King, Chris Knestrick, Jeffrey Mixon, Christopher Stocking and Darrick Wade ("Taxpayers") regarding the refusal of the Clerk of Cleveland City Council to accept petitions for a proposed ordinance by initiative petition that would protect Cleveland's children from lead poisoning.

I ask that you provide written assurance by May 20, 2019 that the Clerk of Council has accepted the Taxpayers' petitions for the proposed ordinance or, in the alternative, that your office has filed a writ of mandamus seeking to compel the Clerk of Council to perform her obligated duties.

I. The City Charter provides for a process by which Taxpayers can seek to bring a proposed ordinance to City Council and, if necessary, to the voters of the City of Cleveland.

Sections 49-58 of the Cleveland City Charter lay out a clear process through which qualified electors of the City of Cleveland may propose an ordinance by initiative petition. Under those provisions "any proposed ordinance may be submitted to the Council by petition signed by at least five thousand (5,000) qualified electors of the City." Charter of the City of Cleveland § 49.

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Once the signatures have been gathered:

All papers comprising a petition shall be assembled and filed with the Clerk of the Council as one instrument by no later than 4:00 p.m. on a regular business day of the office of the Clerk. Within ten (10) days from the filing of a petition the Clerk shall ascertain whether it is signed by the required number of qualified electors.

Charter of the City of Cleveland § 51. After confirming the number of signatures, the Clerk must “submit the proposed ordinance to the Council at its next regular meeting and the Council shall at once read and refer the same to an appropriate committee.” Charter of the City of Cleveland § 54. At that time, the City Council may review the legislation and, if the Council declines to pass the legislation, the electors have the right to submit the ordinance to a public vote at an upcoming election. Charter of the City of Cleveland § 57.

Each of these provisions is clear and unambiguous: the Clerk of City Council has a ministerial obligation to accept the petitions and ascertain whether a sufficient number of signatures was included. The law does not allow the Clerk to substantively analyze the bill or the electoral viability of the petition and the law certainly does not provide for the Clerk to find contrived reasons to refuse the petitions.

II. Taxpayers have properly used the Charter’s process to submit petitions to the Clerk of Cleveland City Council regarding a lead safe housing law.

Cleveland is in the midst of a lead poisoning crisis. Recent data from Case Western shows that more than a quarter of incoming kindergarteners have had elevated blood lead levels beyond the CDC’s recommended limits. In some school, the percentage of poisoned children is above 40%. These rates are two to three times higher than rates seen in Flint, Michigan at the height of their lead crisis.

It is well documented that lead poisoning causes profound psychological and behavioral health effects, including increase impulsivity, decreased academic achievement, and increased risk of interaction with the criminal justice system. In other words, Cleveland must address lead poisoning if it wishes to get to the root of the economic and health disparities that persist in our City.

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Although lead poisoning is a health problem, research tells us there is a housing solution. Currently Cleveland only tests properties for lead *after* a child has been poisoned. Taxpayers' proposed legislation would test rental homes *before* a child becomes sick. Preventative testing is in line with best practices adopted in other states and cities and it is mirrored in pending legislation at the federal level.

Taxpayers—along with other community activists—have been working to persuade Cleveland City Council to pass a comprehensive “lead safe” ordinance for years. However, they have had no success. As a result, Taxpayers began the ballot initiative process in January 2019. As required by the Charter, the group nominated representative electors—the ten Taxpayers on whose behalf this letter is written—and began collecting the required signatures. Again, as anticipated by the Charter, the Electors obtained thousands of signatures and properly brought them to the Clerk of City Council before 4:00pm on a regular business day. It is now the responsibility of the Clerk to accept the petitions and ascertain whether a sufficient number of signatures were included.

III. The Clerk of the City of Cleveland has no legal basis under which to refuse the Taxpayers' petitions.

The Ohio Supreme Court has made clear that “a city council has no authority to review the substance of a proposed ballot measure[,] ... [n]or can the city council assess the constitutionality of a proposal, because that role is reserved for the courts.” *State ex rel. Ebersole v. Powell*, 141 Ohio St.3d 17, 2014- Ohio-4283, 21 N.Ed.3d 274, ¶ 6, citing *State ex rel. Polcyn v. Burkhardt*, 33 Ohio St.2d 7, 292 N.E.2d 883 (1973).

The Supreme Court has concluded time and time again that the City must perform their ministerial duties and may not make substantive determinations on the proposed legislation. The Court in *Ebersole* enumerated the following cases supporting this proposition:

See *State ex rel. N. Main St. Coalition v. Webb*, 106 Ohio St.3d 437, 2005-Ohio-5009, 835 N.E.2d 1222, ¶ 30-31 (council clerk exceeded her authority by deciding that the initiative petition involved a subject that the village was not authorized to control by legislative action); *Morris v. Macedonia City Council*, 71 Ohio St.3d 52, 55, 641 N.E.2d 1075 (1994) (“The city council's constitutional authority to review the sufficiency of petitions is limited to matters of form, not substance”); *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 53, 572 N.E.2d 649 (1991) (council exceeded its authority by tabling initiative ordinance it opposed

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because once the form of the petition is approved, council must place it on the ballot).

More recently, the Clerk of Cleveland City Council lost another bid to refuse petitions. After the Clerk refused to accept petitions on the Q Deal Referendum, citing the unconstitutionality of submitting the emergency ordinance to a vote, the Ohio Supreme Court concluded that the Clerk had acted improperly. The Court wrote that the Clerk had “a clear legal duty to perform the ministerial function of her office—verifying the sufficiency of the petition signatures.” *State ex rel. Langhenry v. Britt*, 151 Ohio St.3d 227, 2017-Ohio-7172, ¶ 24. The referendum process and ordinance by initiative petition process are governed by the same sections of the City Charter. *See* Charter of the City of Cleveland §§ 51, 59.

If there had ever been any doubt, the Supreme Court’s decision in *Langhenry* makes clear that the Clerk must accept the petitions and perform her duties in determining the sufficiency of the signatures.

IV. Under R.C. 733.58, R.C. 733.59, and the City of Cleveland Charter §§ 89-90, the Director of Law is required to initiate a mandamus action seeking to compel the Clerk to accept the petitions.

Under Ohio law, “in case an officer or board of a municipal corporation fails to perform any duty expressly enjoined by law or ordinance, the village solicitor or city director of law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of the duty.” R.C. 733.58. This requirement is mirrored in § 89 of the City of Cleveland Charter (“In case any officer or commission fails to perform any duty required by law, the Director of Law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of such duty.”)

As required by the Charter, this letter hereby serves as the Taxpayer’s written request that the Law Department file a mandamus action seeking an order that the Clerk fulfill her obligations under the Charter. City of Cleveland Charter § 89-90. Additionally, as contemplated by R.C. 733.581, the Taxpayers hereby request to be named as a party defendant so that they may have the “right to assist in presenting all issues of law and fact to the court in order that a full and complete adjudication of the controversy may be had.” R.C. 733.581

V. If the Law Department fails to act by May 20, 2019, Taxpayers will seek all recourse available under law.



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As provided for under the Ohio Revised Code and the Cleveland City Charter, if the Law Department does not seek to compel the Clerk to fulfill her duties, the Taxpayers may initiate a Taxpayer's suit to compel the same. *See* R.C. 733.59; City of Cleveland Charter § 90. Moreover, Taxpayers will seek to be made whole by ensuring that the proposed legislation remains on track. *State ex rel. Meigs Cty. Home Rule Comm. v. Meigs Cty. Bd. Of Comm'rs*, 148 Ohio St. 3d 63, 2016-Ohio-5658, 68 N.E.3d 781 ¶19, citing *State ex rel. Stern v. Quattrone*, 68 Ohio St. 2d 9; 426 N.E.2d 1389 (1981) ("When the Board of Elections ultimately certifies the validity of a petition and [any] delay was not the fault of the initiative's supporters, a writ of mandamus will issue to place the matter on the ballot. Any other result would be unfair and thwart the constitutional right of initiative.")

The Clerk has an unambiguous duty under law to accept the petitions and verify whether the required number of signatures were included. Taxpayers will take all available steps to ensure that the Clerk fulfills that responsibility.

Finally, the Taxpayers would like to highlight the cynical and anti-democratic nature of the actions of the Clerk of Council. There is no higher form of democracy than the right of the people to petition the government. The people of the City of Cleveland wish to have their voices heard. At a time when a quarter of Cleveland's kindergartners have been found to have elevated blood lead levels, the people have the right to use the processes enshrined in law to bring a proposed ordinance to City Council and, if necessary, the ballot box. The Clerk and City Council are employed to serve the people of Cleveland, not dismiss them.

The Taxpayers request that the Law Department act swiftly to rectify the Clerk's refusal to accept the petitions. Cleveland's children deserve nothing less.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Dann', written over the word 'Sincerely,'.

Mard E. Dann

A large, stylized handwritten signature in black ink, appearing to read 'Donna Taylor-Kolis', written below the signature of Mard E. Dann.

Donna Taylor-Kolis